IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1667 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SURABHAI NARSINGBHAI BHARWAD - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KALPESH N SHASTRI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/12/2005

ORAL JUDGMENT

1.Shri Surabhai N. Bharwad, petitioner has filed this petition challenging the order dated 27-28/11/2003

passed by the Sub Divisional Magistrate, Viramgam, District:Ahmedabad, externing the petitioner from Ahmedabad City, Ahmedabad (R), Mehsana, Patan, Surendranagar, Gandhinagar for a period of two years. He has also challenged the order dated 4/5/2005 passed by the Additional Secretary, Home Department, Gandhinagar, by which the authority has rejected his appeal and confirmed the order of Sub Divisional Magistrate, respondent no.2.

2. From the record, it appears that petition was filed on 9/9/2005. However, when the matter was placed before this Court on 29/11/2005, this Court pleased to pass following order:

> "The petitioner has challenged externment order dated 4/5/2005. Hence, learned advocate for petitioner prays to convert and register this Special Civil Application as Special Criminal Application. Office is directed to do the same. S.O. to 1/12/2005."

3. Hence, the petition has been converted. On 1/12/2005, this Court has issued Rule which is returnable on

15/12/2005 and therefore, the matter has been placed for hearing to this Court.

4. Mr.K.N.Shashtri, learned advocate appears for the petitioner. On behalf of respondent, Mr.L.R.Pujari appears. Mr.Shashtri, learned advocate for the petitioner has invited my attention to the fact that the Sub Divisional Magistrate has issued notice under Section 59 of the Bombay Police Act on 16/12/2002 to the petitioner. Petitioner has filed reply on 9/4/2003. The authority thereafter, on 28/11/2003, passed final order. The Sub Divisional Magistrate, Viramgam, District: Ahmedabad on 27/11/2003 passed order under Section 56(C) of the Bombay Police Act and directed the petitioner that he may be externed for the period of two years from Ahmedabad City, Ahmedabad (R), Mehsana, Patan, Surendranagar and Gandhingar.

5. Being aggrieved and dissatisfied with the said order, petitioner has preferred appeal and the Additional Secretary, Home Department, Gandinagar has by order dated 4/5/2005 pleased to dismiss the appeal and confirm the order of externment, externing the petitioner in this behalf.

6. Being aggrieved and dissatisfied with the said, petitioner has filed this petition under Article 226 and 227 of the Constitution of India as stated above.

7. The learned advocate for the petitioner has stated that though on merits of the matter, there are several grounds which can be urged at the time of hearing. However, he has confined to only one argument in this behalf. He has stated in this case the authority has issued notice on 16/12/2002 and order was passed on 27/11/2003. As the authority has passed the order after a great delay, as the authority has not explained about the delay and therefore, this order of the authority is liable to be quashed and set aside. Even the authority has not filed affidavit to explain the delay in this behalf. In absence of affidavit, this Court has to presume that the authority has not cogent material to pass the order after unreasonable delay and therefore, the order is liable to be quashed and set aside. For the same, the learned counsel for the petitioner has relied upon the judgment of this Court in the case of Dilaji Bharthaji Vihol in Special Criminal Application No.1451 of 2005 decided on

1/12/2005 (Coram:K.M.Mehta, J.).

8. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has supported the order of externment on the grounds stated therein. It is true that from the body of the order, the delay is expressed, therefore, he can make any additional submissions in this behalf.

9. Having heard the learned counsel for the parties and perused the material on record of this case, in my considered view, the externing authority has passed the externment order after great delay. Neither in the order nor in the affidavit the authority has explained the delay. Considering the rival submissions of the parties, the order of externment is required to quashed and set aside. Contentions of the petitioner are squarely covered by the judgment of this Court in the case of Dilaji Bharthaji Vihol in Special Criminal Application No.1451 of 2005 decided on 1/12/2005. Therefore, only on the ground of delay, petition is liable to be allowed.

10. I have considered the provisions of Section 56 and 59 of the Bombay Police Act and also considered unreported

judgment of Division Bench of this Court in the case of Vasantiben Mukeshbhai Rander v. State of Gujarat decided on 24/6/1995. I have also considered the Division Bench judgment of this Court in the case of Chothamal Sagansingh Rajput v. State of Gujarat and others, reported in 1989 (30) (1) GLR 63 and judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Application No.1451 of 2005 decided on 1/12/2005.

11. In the result, petition is allowed. Order of externment dated 27-28/11/2003 is quashed and set aside and order dated 4/5/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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